

FILED  
COURT OF APPEALS  
DIVISION II  
2014 SEP -8 AM 9:43  
STATE OF WASHINGTON  
BY DEPUTY

NO. 46334-2-II

IN THE COURT OF APPEALS  
OF THE STATE OF WASHINGTON  
DIVISION II

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ANTHONY DAVIS,

APPELLANT- PLAINTIFF

v.

TACOMA SCHOOL DISTRICT,

RESPONDENT- DEFENDANT

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APPEAL FROM PIERCE COUNTY SUPERIOR COURT  
CAUSE NO. 13-2-15955-0  
HONORABLE SUSAN S. SERKO

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**BRIEF OF RESPONDENT TACOMA SCHOOL DISTRICT**

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## I. INTRODUCTION

Respondent Tacoma School District (hereinafter the "District") employed Petitioner Anthony Davis (hereinafter "Mr. Davis") as a special education teacher from July 31, 2007 through May 15, 2013, when Mr. Davis' employment was both terminated **and** non-renewed for falsifying information on his employment application and for engaging in inappropriate conduct directed towards both students and staff. Mr. Davis appealed his termination which was subsequently upheld by a hearing officer following a two-day hearing in January of 2014.

While awaiting Mr. Davis' statutory appeal hearing, and despite the fact that Mr. Davis was out on administrative leave and not performing any work for the benefit of the District, the District met its statutory obligations by paying Mr. Davis all wages and benefits owed for the remainder of his 2012-13 contract. It was only when Mr. Davis was no longer under any valid contract with the District, pursuant to the non-renewal necessarily implied in his termination, that it stopped paying him wages and benefits, which Mr. Davis now claims were wrongfully withheld.

Any termination pursuant to RCW 28A.405.300 necessarily carries with it a non-renewal of future employment contracts pursuant to RCW 28A.405.210, whether it be stated explicitly in the written notice of probable cause or not. This implicit loss of future contract rights is an obvious corollary of the termination of a current employment contract and for an employee, such as Mr. Davis, to take the position that they did

not believe that to be the case or required separate notice of this loss of future contract rights is nothing more than an insincere position directed at the District in malice for ceasing the employment relationship.

The Trial Court did not err in dismissing Mr. Davis' claims as the District did not commit any legal wrongdoing in paying Mr. Davis through the conclusion of his 2012-13 contract pending appeal and only then, when he was longer under contract, ceasing to pay his wages and benefits. Any damage to Mr. Davis was a direct result of his committing egregious misconduct in applying for District employment, not a result of the District's actions.

## **II. STATEMENT OF THE CASE**

As relevant background, in the spring of each year, the District enters into new employment contracts with those employees whose contracts will be renewed for the following school year. *See* CP 217-222. Mr. Davis signed such a contract each spring that his contract was renewed for the following school year. *See Id.* For example, in May of 2012, Mr. Davis signed an employment contract with the District for the upcoming 2012-13 school year. *See* CP 224. Under the School Board adopted, and TEA ratified, calendar which is included in the Collective Bargaining Agreement between school employees and the District, the 2012-13 school year ended on August 29, 2013, and the 2013-14 school year started on August 30, 2013. *See* CP 363.

The District hired Mr. Davis in July of 2007 as a Special Education Teacher. *See* CP 54. Mr. Davis worked at Mount Tahoma High School as a special education teacher in various classrooms until he was placed on paid administrative leave on March 21, 2013 following allegations that Mr. Davis had engaged in misconduct in his dealings with both special education students and staff members.<sup>1</sup> *See* CP 90-91. Following an investigation into the misconduct allegations, which also revealed that Mr. Davis committed perjury in submitting a number of untruthful responses to questions posed in his employment application,<sup>2</sup> and the subsequent pre-determination *Loudermill* meeting, the District determined there was sufficient and/or probable cause to terminate Mr. Davis' 2012-13 employment contract. *See* CP 93-150.

Mr. Davis was advised of the District's intent to terminate his employment contract through a notice of probable cause letter which was issued on May 15, 2013. *See* CP 93-150. In addition to notifying him of

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<sup>1</sup>This misconduct included inappropriate conduct directed towards special education students and, on one occasion, disclosing to a paraeducator that, "if I were not a Christian man, I would shoot (or blow up) Cooper and Worthen." CP 209-211. Mr. Cooper was the Tahoma High School Assistant Principal and Mr. Worthen was a school psychologist. *See Id.*

<sup>2</sup>When Mr. Davis applied for employment with the District, he lied, under the penalty of perjury on his employment application, omitting information about the circumstances of his employment at both the South Kitsap School District and Clover Park School District, as well as his lawsuits against the Clover Park School District, knowing that his dishonesty would better his chances of obtaining employment. *See* CP 206-09.

the District's intent to terminate his 2012-13 contract, this letter also, when read by any reasonable mind, necessarily implied that his contract would not be renewed for the 2013-14 school year.<sup>3</sup> Two (2) days after his receipt of the notice of probable cause letter, Mr. Davis advised the District of his intent to appeal the termination under RCW 28A.405.310. *See* CP 58.

Around this same time, Mr. Davis was not offered and did not sign an employment contract renewing his employment for the 2013-14 school year as he had done during each previous year of employment with the District and as the vast majority of other certificated employees were doing at that time, as they too had done every previous year.

On or about June 14, 2013, Mr. Davis was also sent a letter confirming that the Board of Directors had approved the non-renewal of his contract and that the last day of his employment with the District would be August 29, 2014.<sup>4</sup> *See* CP 404-05.

In appealing the Trial Court's ruling, Mr. Davis places improper emphasis on his receipt of a boilerplate letter he received from the District's Human Resources Department on July 22, 2013. In this letter,

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<sup>3</sup> It would be nonsensical for a teacher to conclude and/or assume they would be receiving a contract for the following school year if their current contract was being terminated.

<sup>4</sup> The original letter was amended and a corrected version was re-sent to Mr. Davis with a cover letter dated June 21, 2013, explaining the system error in the previous letter. *See* CP 404-05.

Mr. Davis was advised that he would remain on administrative leave status pending his statutory appeal. *See* CP 407. At that time, the District representative who sent the letter was unaware of the parties' troubles in agreeing upon a hearing officer, and therefore had not considered that the hearing may occur after the conclusion of Mr. Davis' 2012-13 employment contract. *See* CP 79-84.

On August 29, 2013, Mr. Davis' 2012-13 employment contract with the District came to an end. *See* CP 224; CP 363. With the expiration of Mr. Davis' employment contract, the District rightfully ceased to provide any further wages or benefits to Mr. Davis. It is uncontested that Mr. Davis has not performed any work for the District since his employment contract came to an end on August 29, 2013.

In September of 2013, Mr. Davis moved for a continuance of his statutory appeal hearing which was set for November of 2013. In opposing the continuance, the District stated in briefing it would face financial hardship if the hearing was continued. However, this statement was a result of miscommunication and during oral argument on Mr. Davis' motion the District was forthcoming in correcting this misstatement. At that time, all parties, including the hearing officer, were aware that Mr. Davis no longer had a current employment contract with the District and was therefore no longer receiving payment from the District.

In October of 2013, Mr. Davis filed a Notice of Tort Claim with the District seeking payment for a variety of claims, including the claims giving rise to the underlying action stating that his payment and benefits were discontinued “without any notice.” CP 26. Mr. Davis subsequently filed the action which is presently before the Court on December 27, 2013. *See* CP 1-5.

Mr. Davis’ two-day statutory appeal hearing under RCW 28A.405.310 was held on January 14 and January 15, 2014. *See* CP 205-214. On January 31, 2014, the hearing officer, the Honorable Robert Peterson (Ret’d), issued his decision finding that the District had probable cause to terminate Mr. Davis’ employment. *See Id.* Remediation was determined not to be appropriate as Mr. Davis refused to acknowledge fault for his misconduct. *See* CP 212. In his decision, Judge Peterson also emphasized that Mr. Davis’ false answers on his application damaged his ability to be a good teacher, as he was now one who the District could not trust to accurately report on important issues. *See* CP 205-214. Lastly, Judge Peterson concluded that the District complied with all procedure and notice requirements in issuing its notice of probable cause. *See* CP 213-14. Mr. Davis appealed this decision to the Pierce County Superior Court and a hearing is set for September 12, 2014. *See* CP 27.

### **III. ARGUMENT**

When Mr. Davis' employment with the District was terminated on May 15, 2013, it necessarily included an implicit and obvious non-renewal of his contract for the 2013-14 school year. Accordingly, the May 15, 2013 Notice of Probable Cause, which set out the reasons for his discharge, served as both legally sufficient notice of the termination of his 2012-13 contract, as well as the non-renewal of any future contract rights.

As will be shown below, Mr. Davis is unable to show that the Trial Court erred in dismissing his claims finding that the District lawfully terminated and non-renewed him as a result of his egregious misconduct and that it was within the District's legal right to cease paying Mr. Davis wages and benefits at the conclusion of his current contract period.

#### **A. Standard of Review**

Review of a grant of summary judgment is de novo. *See Beggs v. Dep't of Soc. & Health Servs.*, 171 Wn. 2d 69, 75, 247 P. 3d 421 (2011). Statutory interpretation is a question of law that the appellate court also reviews de novo. *Id.* at 75.

Civil Rule 56 provides that a motion for summary judgment "shall be rendered forthwith when the pleadings, depositions, answers to interrogatories and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the

moving party is entitled to judgment as a matter of law.” CR 56(c). To overcome a motion for summary judgment, the non-moving party must set forth specific facts, and must do more than express opinions or make conclusory statements, showing that there is a genuine issue for trial or must provide facts sufficient to make a prima facie case. *See Francom v. Costco Wholesale Corp.*, 98 Wn. App. 845, 852, 991 P. 2d 1182 (2000); *Young v. Key Pharmaceuticals, Inc.*, 112 Wn. 2d 216, 225, 770 P. 2d 182 (1989). As was determined by the Trial Court, in this case there are no issues of material fact. *See* CP 765-66.

**B. Mr. Davis’ Termination Logically Carried with it a Non-Renewal of his 2013-14 Contract**

There is no legal or statutory requirement that termination and non-renewal of a certificated employee be done in two separate documents or in two separate actions. *See* RCW 28A.405.210; RCW 28A.405.300. In fact, it is inconceivable to imagine a situation, as Mr. Davis now proposes, where a certificated employee’s current contract was terminated, yet he or she would still have a contract for the following school year. Consequently, every termination logically carries with it an implicit non-renewal of the following year’s contract.

Contrary to Mr. Davis’ argument, the District has never argued or contended that Mr. Davis’ termination from employment had the same

legal impact as if he would have been non-renewed. Nor did the Trial Court conflate termination and non-renewal in dismissing Mr. Davis' claims. Rather, it is the District's position that any termination pursuant to RCW 28A.405.300 automatically and logically carries with it a non-renewal of the following year's contract under RCW 28A.405.210. Accordingly, Mr. Davis was both discharged and non-renewed for misconduct, through the two respective statutory processes, in the May 15, 2013 letter which served as notice of probable cause to end his employment with the District and the Trial Court did not err in reaching this conclusion.

Under RCW 28A.405.210, written contracts must be issued to all public school teachers for a period not to exceed one year. *See Id.*; *see also Petroni v. Bd. of Dirs.*, 127 Wn. App. 722, 727, 113 P. 3d 10 (2005). However, this statute, and the issuance of a continuing written contract, **do not** create or establish tenure for teachers. *See Kirk v. Miller*, 83 Wn. 2d 777, 780, 522 P. 2d 843 (1974). Consequently, when a school district finds probable cause for an employment contract not to be renewed for the next term, including for performance deficiencies like Mr. Davis', it is only required to generally notify the employee, in writing, on or before May 15<sup>th</sup> preceding the commencement of the term. *See* RCW 28A.405.210. The one exception to the May 15<sup>th</sup> deadline is when the

omnibus appropriations act has not passed the legislature by May 15<sup>th</sup>, in which case school districts have until June 15<sup>th</sup> to notify certificated employees of non-renewal. *See Id.* Only if such notification of probable cause or opportunity for hearing is not timely provided might the employee have an interest in re-employment for the next term upon contractual terms identical with those which would have prevailed if their employment had actually been renewed by the board of directors for such ensuing term. *See Id.*

Pursuant to RCW 28A.405.210, the District gave Mr. Davis ample and repeated notice that his contract would not be renewed for the 2013-14 school year. First, on May 15, 2013 he was notified that his current contract was being terminated for probable cause. CP 93-150. As stated previously, termination of his current contract carried with it an obvious implicit non-renewal of his contract for the 2013-14 school year. How Mr. Davis now argues before this Court that although his then-current contract was being terminated, he did not know or should not have known that his contract would not be renewed for the following year is baffling. Next, Mr. Davis again was notified of his non-renewal when he did not receive and sign an employment contract with the District for the 2013-14 school year, as he had done in the spring of every other year of his employment. Lastly, in June of 2013, the school board approved the non-

renewal of Mr. Davis' contract and Mr. Davis was sent confirmation that his last day of employment with the District would be August 29, 2013. *See* CP 404-05.

**1. Mr. Davis received timely notice of non-renewal on May 15, 2013.**

Mr. Davis misconstrues the evidence and ignores all other evidence of notice of non-renewal that he was given in arguing that the District is incorrect in classifying the June 14, 2013 letter confirming the non-renewal of his contract as one of many sources of notice of his non-renewal on the basis that it was issued approximately 30 days past the deadline for issuing a notice of non-renewal under RCW 28A.405.210. As an initial matter, this position is patently incorrect. As stated above, this June 14, 2013 letter was simply a confirmation of the non-renewal and not Mr. Davis' actual notice of non-renewal under RCW 28A.405.210. Consequently, it did not need to contain a recitation of the established misconduct which supported his non-renewal, as well as his termination. The evidence shows the District timely notified Mr. Davis of both his non-renewal and his termination, and the probable cause supporting those adverse employment actions, in the May 15, 2013 Notice of Probable Cause letter. *See* CP 93-150. Further, in 2013, the omnibus appropriations act had not passed the legislature by May 15<sup>th</sup>, thus even if

the June 14, 2013 letter was to be considered as Mr. Davis' notice of non-renewal, it would have also been timely under RCW 28A.405.210. *See* RCW 28A.405.210; CP at 404-05.

**2. Common sense dictates that a Notice of Probable Cause under RCW 28A.405.300 carries with it an implicit and obvious non-renewal of any continuing contract rights.**

Mr. Davis next unsuccessfully argues that the Trial Court erred as for the District to have non-renewed his contract in the May 15, 2013 probable cause letter, he asserts that the letter needed to explicitly state that it also constituted a non-renewal of his continuing contract rights and that by omitting that sentence, the District chose only to terminate his employment and not non-renew him for the following contract period. Accordingly, he argues that the District chose only to terminate his employment and not non-renew him. Notably, in making this argument, Mr. Davis supports no legal or statutory requirements which support this position and which require school districts to go out of their way in stating an obvious conclusion.

As has been touched upon previously, it would be entirely unreasonable for an employee to take the position that without explicit and separate notice otherwise under RCW 28A.405.210, they would have a continuing contract right following the termination of their present

contract under RCW 28A.405.300. It would be both impractical and illogical to require school districts to issue a corresponding non-renewal notice or to require school districts to explicitly state the obvious consequence of the termination of the employee's current contract.

The May 15, 2013 Notice of Probable Cause letter clearly identifies the grounds justifying the termination, and obvious non-renewal of Mr. Davis' contract and any future contract rights. *See* CP at 93-150. Mr. Davis knew the District was terminating his employment with the District based upon his egregious misconduct and for him to argue before this Court that without an explicit statement otherwise, he was reasonable in thinking he had a contract for the following school year is a preposterous position.

**C. RCW 28A.405.300 Does Not Require A School District to Retain an Employee Beyond the Duration of their Current Contract**

Mr. Davis is correct in stating that under RCW 28A.405.300 an employee's current contract may not be terminated during a pending appeal. In this case, the District did not terminate Mr. Davis' 2012-13 contract while his appeal was pending and there is no dispute that he received full pay and benefits through the duration of his 2012-13 contract which ended on August 29, 2013. Accordingly, as will be further discussed below, the Trial Court did not err in holding that the District had

the legal and statutory right to cease Mr. Davis' pay and benefits at the conclusion of his 2012-13 contract.

**1. Under the Rules of Appellate Procedure Mr. Davis is precluded from raising the argument of judicial estoppel for the first time on appeal.**

As an initial matter, in arguing that the Court erred in holding the District was not required to retain Mr. Davis as an employee beyond the duration of his contract, Mr. Davis is raising a legal argument for the first time on appeal, that being the application of the doctrine of judicial estoppel. This argument should not be considered by the Court as Mr. Davis failed to preserve this argument below and it does not constitute one of the three exceptions which would allow him to now raise it on appeal. *See* RAP 2.5(a); *Dep't of Ecology v. Tiger Oil Corp.*, 166 Wn. App. 720, 759, n. 5, 271 P. 3d 331 (2012).

Even if this argument was to be considered, it is without legal merit as Mr. Davis cannot show that the application of this doctrine is warranted. As was stated previously, and as is further discussed below, the District has never taken a position clearly inconsistent with its current position in any previous court hearings. *See Arkison v. Ethan Allen, Inc.*, 160 Wn. 2d 535, 538, 160 P. 3d 13 (2007). The District made a misstatement in a pleading in the administrative statutory appeal hearing,

which Mr. Davis knew was a misstatement at the time and which was quickly corrected in an oral hearing with the hearing officer. This hardly constitutes the District taking an inconsistent position in an early hearing. Second, this Court's acceptance of the District's position, or the Trial Court's acceptance of the District's position will not and did not create a perception that the District misled some Court as to Mr. Davis' employment status for the 2013-14 contract period. In October of 2013, the hearing officer was made aware that the statement in the briefing was a misstatement and the District corrected itself in clarifying that Mr. Davis' pay and benefits concluded at the termination of his 2012-13 contract. *See Id.* at 538-39. Similarly, there is no evidence that the District will obtain some unfair advantage or that Mr. Davis will be subjected to some unfair benefit if the District is not bound to an erroneous statement contained in a non-material pleading during the administrative appeal hearing which was corrected with the hearing officer during oral argument. *See Id.* Mr. Davis has been aware that it has been the District's position that it had the right to terminate his pay at the end of the 2012-13 contract period since June 14, 2013, and was reminded of it again when the District stopped paying him at that time. The misstatement in the District's briefing was obviously a scriveners' error and for him to take the position that in spite of all evidence to the contrary, he believed the misstatement to

be the truth is disingenuous. Further, the District's position with respect to his contract status was again re-stated when the District corrected its misstatement in October of 2013 during oral argument and again confirmed that it was taking the position that it had no legal duty to pay him beyond his 2012-13 contract.

This argument is unsupported by the evidence and is nothing more than an attempt by Mr. Davis to somehow portray the District as a bad actor and to distract the Court from the true legal issues, which when examined in light of the evidence resolve in the District's favor.

**2. RCW 28A.405.300 does not require a school district to employ a certificated employee beyond their current contract period pending the completion of a statutory appeal.**

Revised Code of Washington 28A.405.300 specifically addresses whether a school district has the obligation to retain an employee when their statutory appeal occurs after the employee's current one-year employment contract ends. The statute provides in relevant part that in the event that a school district does not provide notice or a timely hearing, the "employee shall not be discharged or otherwise adversely affected in his or her contract status for the causes stated in the original notice *for the duration of his or her contract.*" RCW 28A.405.300 (emphasis added). The statute expressly limits a school district's obligation to retain an

employee to the duration of their employment contract. *See Id.* Notably absent from the statutory terms is any prohibition on a school district's right to discharge an employee at the conclusion of the contract period or any requirement that the employee be offered a contract for the next contract period. *See Id.* Further, Mr. Davis fails to present any evidence of any statute or case law which requires a school district to renew an employment contract with a certificated employee when the school district has properly informed the employee that probable cause exists to terminate their current employment contract.

**D. Mr. Davis Was Both Retained and Paid Through the Remainder of the 2012-13 Contract Period as Is Required by RCW 28A.405.**

Mr. Davis argues that the Trial Court erred in concluding that under RCW 28A.405.300 *et seq.*, the District must only pay an adversely affected employee through the duration of his or her current contract. However, a close reading of this statute shows the Trial Court was correct in concluding that the District did meet its statutory obligations by paying Mr. Davis through the duration of his 2012-13 contract period.

1. **Revised Code of Washington 28A.405.470 does not implicitly require that the District compensate Mr. Davis beyond the term of his 2012-13 contract.**

Mr. Davis' proposed reading of RCW 28A.405.470 (relating to mandatory termination pending charges of crimes against children) in support of his position is patently incorrect. Nowhere in this statute may one imply that it stands for the proposition that compensation continues to be drawn by a certificated employee, into perpetuity, pending an appeal. This statute actually states that if the school district prevails on appeal "[the] school district board of directors is entitled to recover from the employee any salary or other compensation that **may** have been paid to the employee for the period between such time as the employee was placed on administrative leave." RCW 28A.405.470 (emphasis added). If anything, the permissive language, "that may have been paid," supports a conclusion that any compensation paid to an employee pending an appeal is optional in nature. Further, if this statute was to be applied in analyzing the present situation, the District has a strong argument that Mr. Davis' current case is moot as, had the District compensated Mr. Davis from September 2013 through January 2014, the District would actually be entitled to reimbursement from Mr. Davis for any pay and benefits issued during that

time, as well as for pay and benefits issued from May through August of 2013.

**2. Mr. Davis' reliance upon the cited Washington case law is misguided as no Washington court has ever held that a school district is required to compensate an employee beyond the current contract period pending a statutory appeal.**

Mr. Davis is unable to cite to any case where a Washington court has required a school district to compensate an employee pending a statutory termination appeal under RCW 28A.405.310 beyond the current contract period. He first relies on *Bellevue Public School District No. 405 v. Benson*, which found that a court may order back pay if a school district alters an employee's employment contract without a hearing. *See Bellevue Public School District No. 405 v. Benson*, 41 Wn. App. 730, 707 P. 2d 137 (1985).

Mr. Davis' case is distinguishable from *Benson*, where the employee's employment status was altered before a pre-determination *Loudermill* hearing, not a statutory appeal hearing under RCW 28A.405.310. *See Id.* at 734. Here, Mr. Davis was provided with a pre-determination *Loudermill* hearing on May 14, 2013, the day before receiving notice of probable cause for his termination. *See* CP 98-100. Further, in *Benson*, the back pay owed to Mr. Benson was specifically limited to **the remainder of the current contract year**. *See Id.* at 734,

740. Here, there is no dispute that Mr. Davis was compensated through the remainder of his current contract year.

Further contrasting Mr. Davis' reliance on this case in support of his position, is the *Benson* court's conclusion that even if the school district's termination procedure was improper, when the school district notified the employee by May 15<sup>th</sup> that his contract status would be adversely affected, and when he was aware that his contract would not be renewed, and when he received a full and fair hearing by May 15<sup>th</sup>, that "this procedure certainly amounts to a notification of nonrenewal." *Id.* at 738-39. Here, as in *Benson*, Mr. Davis also had sufficient notification of non-renewal because he was notified on May 15, 2013 and again on June 14, 2013, that his contract would be terminated, he was aware that his contract would not be renewed for the 2013-14 school year, and he received a full and fair hearing in the form of a pre-determination Loudermill meeting before May 15, 2013. *See* CP 93-150; CP 404-05.

Mr. Davis additionally attempts to rely on *Sauter v. Mount Vernon School District*, 58 Wn. App. 121, 791 P.2d 549 (1990), to argue that the District's actions denied him protection in the event that the hearing officer determined the District's decision was erroneous. First and foremost, Mr. Davis' argument is moot as the hearing officer concluded the District had probable cause to terminate Mr. Davis, thus it was not an

erroneous decision by the District. Second, in *Sauter*, the court's conclusion hinged on the presence of the employee's teaching contract. *See Id.* at 134. The *Sauter* court did not hold that the school district was required to pay the employee by default, but instead because the district's payment "was reasonable based on the proportion of the completed contract." *Id.* Here, after August of 2013, Mr. Davis did not have a contract for employment with the District, nor did he perform any work for the District after the conclusion of the 2012-13 school year. Under the analysis in *Sauter*, Mr. Davis is not entitled to compensation for the period from September 2013 to January 2014.

**3. The lack of legislative amendments to RCW 28A.405.300 *et seq.* does not require that a school district pay a certificated employee beyond their current contract pending a statutory appeal.**

Mr. Davis contends that because a bill has been proposed that would clarify a school district's duty to pay certificated employees while a statutory appeal is pending, one must conclude that a school district must now be required to do so, otherwise the proposed law would be unnecessary. In making this argument, Mr. Davis overlooks a key fact. The proposed amendments under House Bill 1851 speak to a school district's ability to cease paying wages and benefits under the employee's **current** contract upon the issuance of a Notice of Probable Cause. The

proposed amendments are silent as to a District's ability to cease pay and benefits upon the conclusion of the contract as it is an obvious right and thus unnecessary to include in the proposed language.

In this case, Mr. Davis was paid through the duration of his current contract and the District only stopped paying his wages and benefits when he no longer had a contract with the District. Accordingly, the District complied with its duties under RCW 28A.405.300-380.

**E. The District Does Not Owe Mr. Davis Wages for Work Not Performed Under RCW 49.48.010**

The Superior Court did not err in granting the District's summary judgment motion on Mr. Davis' wage claim as Mr. Davis' 2012-13 employment contract ended on August 29, 2013, he performed no work for the District after that date and it is undisputed that the District paid all wages and benefits owed to Mr. Davis at the end of his final pay period, on August 29, 2013.

RCW 49.48.010 states, in relevant part:

When any employee shall cease to work for an employer, whether by discharge or by voluntary withdrawal, the wages due him or her on account of his or her employment shall be paid to him or her at the end of the established pay period...

RCW 49.48.010.

An examination of the evidence which was before the Trial Court shows that the District fully complied with the statute in question. When

Plaintiff's contract term ended in August of 2013, the District paid Mr. Davis all wages that were due to him. Plaintiff does not dispute this fact, as his Complaint specifically asserts that the District's alleged violation began September 5, 2013. *See* CP 1-5. Instead, Mr. Davis improperly asserts that the District wrongfully "withheld" wages due to him after his employment contract ended, for the time period of September 5, 2013 through the upholding of the termination of his 2012-13 contract on January 23, 2014. *See Id.* Mr. Davis' argument disregards several key facts. First, he did not enter into an employment contract with the District for the 2013-14 school year. Second, Washington law requires that employment contracts for public school teachers be limited to one year terms that must be renewed. Lastly, in insisting that the District violated wage statutes, Mr. Davis simply ignores the fact that he did not perform any work for the District during the period which he argues he is owed wages. In essence, Mr. Davis is arguing that under a liberal reading and application of RCW 49.48.010, he should be paid for performing no work, while the District was receiving no benefit from him, and while he was no longer an employee. It is hard to believe that allowing for this type of windfall is what the Legislature intended in adopting this statute.

**F. The District Did Not Make Any Contract or Promise to Mr. Davis for Payment After the Expiration of his 2012-2013 Contract**

Mr. Davis contends that the Trial Court erred in finding that he failed to prove, through clear and cogent evidence, the following elements of his fraud claim against the District: (1) a representation of an existing fact; (2) its materiality; (3) its falsity; (4) the speaker's knowledge of its falsity or ignorance of its truth; (5) his intent that it should be acted on by the person to whom it is made; (6) ignorance of its falsity on the part of the person to whom it is made; (7) the latter's reliance on the truth of the representation; (8) his right to rely upon it; and (9) his consequent damage. *See Stieneke v. Russi*, 145 Wn. App. 544, 563 (2008); *Pedersen v. Bibioff*, 64 Wn. App. 710, 723 (1992); *Turner v. Enders*, 15 Wn. App. 875, 878, 552 P.2d 694 (1976); *Hughes v. Stusser*, 68 Wn.2d 707, 709, 415 P.2d 89 (1966).

Here, Mr. Davis argues that the District represented to him that he would be paid through a decision on his statutory appeal on two separate occasions: (1) in a letter sent July 22, 2013 stating, "you will remain on administrative leave pay status pending your appeal," and (2) in October of 2013, when in a written response to his motion to continue the hearing date, the District erroneously stated that a continuance would unduly prejudice it as it had already suffered

financial hardship as a result of retaining him on administrative leave.  
*See* CP 407.

First, nowhere in the District's July 22, 2013 letter, is it stated that Mr. Davis would be paid beyond the duration of his current employment contract. *See Id.* Rather it vaguely states, "[y]ou will remain on administrative leave pay status pending your appeal." *Id.* The interpretation of that sentence that Mr. Davis is asking the Court to adopt, that being that it was some promise or assurance of future employment, is illogical. As to the third and fourth elements, Mr. Davis cannot establish that the statement in the letter was false or that the author of the letter, Lynne Rosellini, had knowledge as to the statement's truth or falsity. The statement was not inherently false as the District retained Mr. Davis on administrative leave pay status for the duration of his employment contract pending his appeal, thus at the time the letter was issued, he was on paid administrative leave, pending his appeal, under his 2012-13 contract. Further, Ms. Rosellini was not involved in the hearing scheduling discussions, nor was she aware at the time the letter was sent that Mr. Davis' hearing might occur after August 29, 2013.<sup>5</sup> *See* CP at 79-84. As to the fifth and sixth elements, the District

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<sup>5</sup> Under the statute, the legislature intended for the statutory hearing to occur within approximately 30 days of the receipt of the employee's intent to appeal, barring any request for a continuance by the employee. *See* RCW 28A.405.310.

certainly did not intend for Mr. Davis to unreasonably deduce from the letter that he would be compensated beyond the term of his 2012-13 contract and could not have anticipated that he would make such an unreasonable inference.

Second, Mr. Davis now seems to place much reliance on the District's erroneous statement in briefing in October of 2013 which stated that any further delay in scheduling his statutory hearing would result in further financial prejudice to the District. It is disingenuous for Mr. Davis to assert he relied upon this misstatement to his detriment, or believed it to be true, as when it was made (and shortly thereafter corrected in a telephonic hearing with the hearing officer) Mr. Davis had not received pay or benefits for over 30 days and had been notified twice previously that his employment with the District was terminated at the end of the 2012-13 contract period. *See* CP 93-150; CP 404-05. Accordingly, for him to argue that he relied upon this brief misstatement of counsel believing it to be true, or that the District intended him to act upon this misstatement, while all the evidence shows otherwise, carries little weight on this appeal.

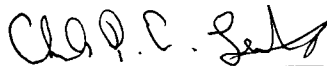
The District was rightfully granted summary judgment on Mr. Davis' fraud claim as the evidence before the Trial Court showed that in attempting to establish the elements of this claim, Mr. Davis

mischaracterized the District's statements, failed to establish any intent on behalf of the District that he would act on any alleged misrepresentation, and failed to establish any right he had to rely on the alleged misrepresentations by the District.

#### **IV. CONCLUSION**

The Trial Court did not err in dismissing Mr. Davis' claims against the District or in denying his motion for partial judgment on liability. The District's termination, and subsequent non-renewal, of Mr. Davis' contracts were procedurally proper. Therefore, the District's duty to continue to provide him with pay and benefits pending his statutory appeal hearing under RCW 28A.405.300 lawfully concluded on August 29, 2013, the end of his contract term. As the District had no duty to provide him with pay or benefits after August 29, 2013, Mr. Davis' claims under RCW 28A.405 and RCW 49.48 are without legal merit. After that date, Mr. Davis had no valid employment contract with the District and performed no work from August 30, 2013 through the time of his statutory appeal hearing and the subsequent upholding of his termination in January of 2014. Accordingly, the District respectfully requests that this Court affirm the Trial Court's order granting the District's Motion for Summary Judgment dismissing all of Mr. Davis' claims with prejudice.

DATED this 5 day of September, 2014.



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**CERTIFICATE OF SERVICE**

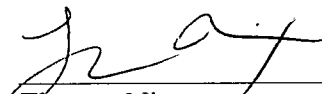
I, Theresa Nixon, hereby certify that on this 5<sup>th</sup> day of September, 2014, I served the foregoing with the Court of Appeals **VIA LEGAL MESSENGER** to 950 Broadway, Ste 300, Tacoma, WA 98402 and caused the same to be served upon each and every attorney of record as noted below:

***Via Legal Messenger and Electronic Mail***

Mr. Tyler Firkins  
Van Siclen Stocks & Firkins  
721 - 45th St. N.E.  
Auburn, WA 98002

I certify under penalty of perjury under the laws of the State of Washington that the above is correct and true.

Executed in Seattle, Washington, on this 5<sup>th</sup> day of September, 2014

  
\_\_\_\_\_  
Theresa Nixon  
Legal Assistant

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